

9 FAM PART IV Appendix Q, 200 SPECIFIC REQUIREMENTS AND RELATED INFORMATION

9 FAM PART IV Appendix Q, 201 ELIGIBILITY CRITERIA FOR SAW PROGRAM

9 FAM PART IV Appendix Q, 201.1 SAWs - Group 1

(TL:VISA-123; 9-8-95)

Group 1 SAWs were those who had performed seasonal agricultural services for an aggregate of at least 90 man-days in each of the 12-month periods ending on May 1, 1984, 1985, and 1986 and who had resided in the United States for an aggregate of at least six months in each of those 12-month periods.

9 FAM PART IV Appendix Q, 201.2 SAWs - Group 2

(TL:VISA-123; 9-8-95)

Group 2 SAWs were those who had performed an aggregate of at least 90 man-days in qualifying agricultural employment in the United States during the 12-month period ending on May 1, 1986.

9 FAM PART IV Appendix Q, 201.3 Family Members

(TL:VISA-123; 9-8-95)

There was no derivative status for family members under the SAW program. Each member of a family wishing to participate had to apply on the basis of his or her own qualifying employment.

9 FAM PART IV Appendix Q, 202 PROOF OF ELIGIBILITY THROUGH EMPLOYMENT RECORDS

(TL:VISA-123; 9-8-95)

The alien could establish eligibility through government employment records, records maintained by employers, pay receipts and other reliable evidence. The applicant had the burden of proving the requisite employment by a preponderance of the evidence. Affidavits not supported by corroborating evidence did not meet the applicant's burden of proof.

9 FAM PART IV Appendix Q, 203 EVIDENTIARY STANDARDS AND ASSESSMENTS

9 FAM PART IV Appendix Q, 203.1 Statutory Factors

(TL:VISA-123; 9-8-95)

The statute set forth basic elements of guidance for determining whether an applicant met the qualifying work and residence requirements in INA 210(b)(3)(B)(i) and (iii), which read (in part), respectively:

(a) An alien ... has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days ... and

(b) An alien can meet such burden of proof ... by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

9 FAM PART IV Appendix Q, 203.2 Effect on Decisions

(TL:VISA-123; 9-8-95)

The "just and reasonable inference" standard set forth above was interpreted to mean that an alien could not be denied such status for failure to establish a complete documentary record of the full periods of employment and residence if, from the evidence and the interview taken together, it was reasonable to conclude there was a likelihood that the applicant met the eligibility requirements.

9 FAM PART IV Appendix Q, 204 APPLICABILITY OF INA 212(a)

(TL:VISA-123; 9-8-95)

a. INA 212(a)(14), (20), (21), (25) and (32) (now (5) and (7)(A)) did not apply to SAW applicants.

b. The following ineligibility provisions could not be waived:

INA 212(a)(9), (10) and (23) (now (2)(A), (2)(B) and (2)(C)), (except as it related to a single offense of simple possession of 30 grams or less of marijuana), (15), (27), (28), (29) and (33) (now (3) other than subparagraph (E) thereof) and (4)). (INA 212(a)(15) (i.e., (4)) was not applicable as a ground of ineligibility, however, if the alien had a history of employment in the United States evidencing self-support without reliance on public cash assistance.)

c. Waivers of all other grounds of ineligibility were available for humanitarian purposes, to assure family unity, or when the granting of such waiver was found to be in the public interest.

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